

SUPPLY AGREEMENT NO. 1519

Non-Shear Flexible Couplings

THIS **Non-Shear Flexible Couplings Supply Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Ferguson Enterprises, Inc. ("Supplier"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Supplier has bid to provide Non-Shear Flexible Couplings in response to Request for Bid No. **1519** ("RFB"), which RFB includes the required scope of work and all specifications and which RFB and the Supplier's bid response are incorporated by reference in this Agreement as Exhibits 1 and 2, respectively, as if each were fully set out here in its entirety.

NOW, THEREFORE, City and Supplier agree as follows:

- 1. Scope.** Supplier will provide Non-Shear Flexible Couplings in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. "Goods," "products", and "supplies", as used in this Agreement, refer to and have the same meaning.
- 2. Term.** This Agreement is for 36 months. The parties may mutually extend the term of this Agreement for up to zero additional zero-month periods ("Option Period(s)"), provided, the parties do so in writing and prior to the expiration of the original term or the then-current Option Period. The City's extension authorization must be executed by the City Manager or designee.
- 3. Compensation and Payment.** The total value of this Agreement is not to exceed \$220,321.13, subject to approved extensions and changes. Payment will be made for goods delivered and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
- 4. Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Name: Robert Presnell
Department: Finance - Warehouse
Phone: (361) 826-1750
Email: RobertPR@cctexas.com

5. **Insurance.** Before performance can begin under this Agreement, the Supplier must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
6. **Purchase Release Order.** For multiple-release purchases of products to be provided by the Supplier over a period of time, the City will exercise its right to specify time, place and quantity of products to be delivered in the following manner: any City department or division may send to Supplier a purchase release order signed by an authorized agent of the department or division. The purchase release order must refer to this Agreement, and products will remain with the Supplier until such time as the products are delivered and accepted by the City.
7. **Inspection and Acceptance.** Any products that are delivered but not accepted by the City must be corrected or replaced immediately at no charge to the City. If immediate correction or replacement at no charge cannot be made by the Supplier, a replacement product may be bought by the City on the open market and any costs incurred, including additional costs over the item's bid price, must be paid by the Supplier within 30 days of receipt of City's invoice.
8. **Warranty.**
 - (A) The Supplier warrants that all products supplied under this Agreement are new, quality items that are free from defects, fit for their intended purpose, and of good material and workmanship. The Supplier warrants that it has clear title to the products and that the products are free of liens or encumbrances.
 - (B) In addition, the products purchased under this Agreement shall be warranted by the Supplier or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.

9. **Quality/Quantity Adjustments.** Any quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator
10. **Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.
11. **Independent Contractor.** Supplier will perform the work required by this Agreement as an independent contractor and will furnish such products in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Supplier be considered an employee of the City.
12. **Subcontractors.** Supplier may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Supplier must obtain prior written approval from the Contract Administrator if the subcontractors were not named at the time of bid. In using subcontractors, the Supplier is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Supplier. All requirements set forth as part of this Agreement, including the necessity of providing a COI in advance to the City, are applicable to all subcontractors and their employees to the same extent as if the Supplier and its employees had performed the work.
13. **Amendments.** This Agreement may be amended or modified only by written change order signed by both parties. Change orders may be used to modify quantities as deemed necessary by the City.
14. **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
15. **Taxes.** The Supplier covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other related taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
16. **Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day

faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attn: Robert Presnell
Title: Stores Supervisor
Address: 5352 Ayers Street Bldg.6, Corpus Christi, TX 78415
Phone: (361) 826-1750
Fax: (361) 826-1690

IF TO SUPPLIER:

Ferguson Enterprises, Inc.
Attn: Bryan Steele
Title: Sales Manager
Address: 221 Junior Beck Dr., Corpus Christi, Texas 78405
Phone: (361) 289-1977
Fax: (361) 289-1968

- 17. SUPPLIER SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES, WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH A BREACH OF THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT BY THE SUPPLIER OR RESULTS FROM THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE SUPPLIER OR ITS EMPLOYEES OR AGENTS. SUPPLIER MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING OR RESULTING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF SUPPLIER UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.**

18. Termination.

(A) The City Manager may terminate this Agreement for Supplier's failure to perform the work specified in this Agreement or to keep any required insurance policies in force during the entire term of this Agreement. The Contract Administrator must give the Supplier written notice of the breach and set out a reasonable opportunity to cure. If the Supplier has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

(B) Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Supplier. The City Manager may also terminate this Agreement upon 24 hours written notice to the Supplier for failure to pay or provide proof of payment of taxes as set out in this Agreement.

19. Assignment. No assignment of this Agreement by the Supplier, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Supplier is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.

20. Severability. Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.

21. Order of Precedence. In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:

- A. this Agreement (excluding attachments and exhibits);
- B. its attachments;
- C. the bid solicitation document including any addenda (Exhibit 1); then,
- D. the Supplier's bid response (Exhibit 2).

22. Certificate of Interested Parties. Supplier agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement.

23. Verification Regarding Israel. In accordance with Chapter 2270, Texas Government Code, the City may not enter into a contract with a company for

goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this Agreement on behalf of the Supplier verifies that the company does not boycott Israel and will not boycott Israel during the term of this Agreement.

24. **Governing Law.** This Agreement is subject to all federal, State, and local laws, rules, and regulations. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
25. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

(SIGNATURE PAGE FOLLOWS)

SUPPLIER

Signature: _____

Printed Name: _____

Title: _____

Date: _____

[Handwritten Signature]
Byron Steele
Sales
03-28-18

CITY OF CORPUS CHRISTI

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Attached and Incorporated by Reference:

- Attachment A: Scope of Work
- Attachment B: Bid/Pricing Schedule
- Attachment C: Insurance Requirements
- Attachment D: Warranty Requirements

Incorporated by Reference Only:

- Exhibit 1: RFB No. 1519
- Exhibit 2: Supplier's Bid Response

Attachment A – Scope of Work

1.1 General Requirements/Background Information

The Supplier shall provide non-shear flexible couplings for the City's Warehouse as outlined in this Scope of Work. The non-shear flexible couplings are used by the Water and Wastewater Departments to splice and repair existing utility lines, pipe repair and new construction projects located throughout the City.

1.2 Scope of Work

- A. The Supplier shall provide non-shear flexible couplings, as outlined on the bid/pricing schedule. This specification covers various couplings used by the City. The products listed in this specification will be used to restock the Warehouse Department.

- B. Applicable Specifications: ANSI/NSF 61, ASTM A536, ASTM A325, ASTM A563 or AWWA C111, ASTM A307, stainless steel series 300, ASTM C564, ASTM A167, ASTM C1173, ASTM A240, ASTM C425. Certification of compliance with ANSI/NSF is not required for wastewater couplings.

- C. Functional and Performance Requirements: Non-Shear Flexible Couplings - Wastewater Systems (Mission Rubber Co. MR-ARC or Fernco 5000 RC Series Only)
Couplings are for joining various combinations of vitrified clay sewer pipe and/or schedule 40 PVC pipe in underground drainage and sewer piping systems. Couplings shall meet requirements of ASTM C1173-91, Type A. Couplings to have shear ring and center stop. Tension bands and exterior shear rings shall be constructed of 300 series stainless steel and conform to ASTM A240. Couplings designed for different sized pipe joints (e.g., clay x pvc) shall be of concentric, single piece (exclusive of shear ring and tension bands) construction. They shall not use separate, loose, inserts (bushings) to size the small diameter end.

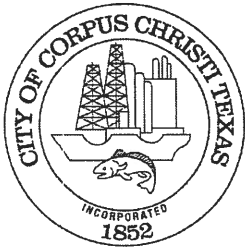
D. The Supplier will cross reference the City's stock number listed on the bid sheet. The City agrees not to change the stock numbers assigned to each item for the duration of the contract.

1.3 Contractor Quality Control and Superintendence

All non-shear flexible couplings will be defect free, properly packed and shipped to ensure a safe delivery.

1.4 Delivery

1. Supplier shall ship the materials in a specified time frame dictated by the Department Requestor to: City's Warehouse located at 5352 Ayers St. Building 6, Corpus Christi, Texas 78415.
2. All contract prices are F.O.B destination, inside delivery to the City of Corpus Christi Facility, freight prepaid.
3. Receipt of products that do not conform will not be accepted by the City.
4. Supplier shall pay for return shipment on any products that arrive in a defective, unusable or inoperable condition. Supplier must arrange for the return shipment of damaged products.
5. Supplier understands and agrees that the City may, at its discretion, cancel any backorders due to the Supplier's inability to deliver the product within the set time frame.
6. Cancellations shall be in writing and sent to Supplier by email, fax or mail.
7. No restocking fee or payment of any kind shall be owed for orders cancelled due to Supplier's inability to meet the deadline delivery date.



CITY OF CORPUS CHRISTI
BID FORM
 PURCHASING DIVISION
 RFB No. 1519
Non-Shear Flexible Couplings

PAGE 1 OF 2

Date: 03-20-2018Bidder: FERGUSONAuthorized
Signature: _____

1. Refer to "Instructions to Bidders" and Contract Terms and Conditions before completing bid.
2. Quote your best price for each item.
3. In submitting this bid, Bidder certifies that:
 - a. the prices in this bid have been arrived at independently, without consultation, communication, or agreement with any other Bidder or competitor, for the purpose of restricting competition with regard to prices.
 - b. Bidder is an Equal Opportunity Employer, and the Disclosure of Interest information on file with City's Purchasing office, pursuant to the Code of Ordinances, is current and true.
 - c. Bidder is current with all taxes due and company is in good standing with all applicable governmental agencies.
 - d. Bidder acknowledges receipt and review of all addenda for this RFB.
4. Bidders must not write over or revise the bid form. Bidders will be considered Non-Responsive if the bid form is modified.

Item	City Stock No.	Description	UNIT	3yr-Qty.	Unit Price	Total Price
1	City Stock No. 1817	3 CI PVC x 3 CI PVC Coup RC, Model # F105633 RC	EA	81	\$ 10.919	\$ 884.44
2	City Stock No. 1818	4 Clay x 3 CI PVC COUP RC, Model # F500243RC	EA	36	\$ 22.112	\$ 796.03
3	City Stock No. 1819	4 CI PVC x 4 CI PVC Coup RC, Model # F505644RC	EA	2,595	\$ 14.340	\$ 37 0 12.30
4	City Stock No. 1820	4 Clay x 4 S40 PVC Coup RC Model #F500244RC	EA	2,859	\$ 21.031	\$ 60 0 27.63
5	City Stock No. 1826	6 Clay x 6 S40 PVC Coup RC, Model #F500266RC	EA	1,152	\$ 35.664	\$ 41 0 84.93
6	City Stock No. 1827	6 Clay x 6 Clay Coup RC, Model # F500166RC	EA	6	\$ 27.327	\$ 163.96
7	City Stock No. 1828	6 CI PVC x 6 PVC Coup RC, Model #F505666RC	EA	528	\$ 26.768	\$ 14 0 33.50
8	City Stock No. 1829	8 CI PVC x 8 CI PVC COUP RC, Model #F505688RC	EA	408	\$ 39.343	\$ 16 0 51.94

9	City Stock No. 1830	8 Clay x 8 Clay Coup RC, Model# F500188RC	EA	6	\$ 39.343	\$ 236.06
10	City Stock No. 1831	8 Clay x 8 CI PVC Coup RC, Model #F500288RC	EA	714	\$ 40.573	\$ 28 9 69.12
11	City Stock No. 1832	10 CI PVC x 10 CI PVC Coup RC, Model # F50561010RC	EA	36	\$ 51.699	\$ 1 8 61.16
12	City Stock No. 1833	10 Clay x 10 CI PVC Coup RC, Model #F50021010RC	EA	72	\$ 51.699	\$ 3 7 22.33
13	City Stock No. 4560	15 Clay x 15 CI PVC Coup RC, Model #F50021215RC	EA	36	\$ 186.488	\$ 6 7 13.57
14	City Stock No. 4561	15 CI PVC x 15 CI PVC Coup RC, Model #F50561515RC	EA	36	\$ 107.044	\$ 3 8 53.58
15	City Stock No. 4565	12 Clay x 12 CI PVC Coup RC, Model #F50021212RC	EA	36	\$ 62.647	\$ 2 2 55.269
16	City Stock No. 4583	12 CI PVC X 12 PVC Coup RC, Model #F50561212RC	EA	36	\$ 62.647	\$ 2 2 55.29
Total						\$220 9 21.13

Attachment C – Insurance Requirements

CONTRACTOR’S LIABILITY INSURANCE

- A. Contractor must not commence work under this contract until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor, to commence work until all similar insurance required of any subcontractor has been obtained.
- B. Contractor must furnish to the City’s Risk Manager and Contract Administrator one (1) copy of Certificates of Insurance with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City’s Risk Manager. The City must be listed as an additional insured on the General liability policy **by endorsement**, and a waiver of subrogation **endorsement** is required on all applicable policies. **Endorsements** must be provided with Certificate of Insurance. Project name and/or number must be listed in Description Box of Certificate of Insurance.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-day advance written notice of cancellation, non-renewal, material change or termination required on all certificates and policies.	Bodily Injury and Property Damage Per occurrence - aggregate
COMMERCIAL GENERAL LIABILITY including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence \$1,000,000 Aggregate

- C. In the event of accidents of any kind related to this contract, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

II. ADDITIONAL REQUIREMENTS

- A. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in statutory amounts according to the Texas Department of Insurance, Division of Workers' Compensation. An All States Endorsement shall be required if Contractor is not domiciled in the State of Texas.
- B. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
- C. Contractor shall be required to submit renewal certificates of insurance throughout the term of this contract and any extensions within 10 days of the policy expiration dates. All notices under this Exhibit shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-9277

- D. **Contractor agrees that, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
- List the City and its officers, officials, employees, and volunteers, as additional insureds by endorsement with regard to operations, completed operations, and activities of or on behalf of the named insured performed under contract with the City, with the exception of the workers' compensation policy;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days advance written notice directly to City of any, cancellation, non-renewal, material change or termination in coverage and not

less than ten (10) calendar days advance written notice for nonpayment of premium.

- E. Within five (5) calendar days of a cancellation, non-renewal, material change or termination of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this contract.
- H. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Corpus Christi for liability arising out of operations under this contract.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

2017 Insurance Requirements
Purchasing
Order and Delivery of Goods
10/27/2017 sw Risk Management

Attachment D - Warranty Requirements



TERMS

All prices shown are Trade/List, stated in U.S. currency and subject to change without notice.

MINIMUM INVOICE - None.

PAYMENT TERMS - 1% 10th prox. Net 30 days unless otherwise stated.

FREIGHT TERMS - Prepaid and allowed on net orders of \$750.00 or more unless otherwise stated. All others will be prepaid and billed. Claims for loss or damage must be filed with the freight carrier.

SALES POLICY - Fernco products are available to any legitimate wholesaler, pipe manufacturer or distributor with approved credit.

RETURN POLICY - All returns must be preceded by factory authorization.

Minimum 15% restocking charge will apply to all standard Fernco products. All materials returned to Fernco should be in original cartons and be in resaleable condition. This amount is subject to change depending on condition of items returned to Fernco.

- *Fernco Custom Parts are Non-Returnable.*
- *Freight must be prepaid on all return shipments.*
- *Returns will not be allowed after 90 days of invoice date.*

LIMITED WARRANTY: Fernco warrants its product(s) against all defects in workmanship or materials for a period of one (1) year from date of original purchase (unless a shorter period is expressly provided with respect to a particular product). Fernco's total liability under any warranty, or any other claim arising in any way from the product or its use, is limited, at Fernco's option, to refund or replacement of any such product returned to Fernco within the one-year warranty period and determined by Fernco to be defective. To the extent permitted by law, Fernco disclaims and excludes any and all other warranties, express or implied, including without limitation any implied warranty of merchantability or fitness for a particular purpose, and in no event shall Fernco be liable for special, incidental or consequential damages. Failure to follow the installation instructions provided by Fernco will void this any warranty. To make a warranty claim, purchaser should have the original receipt and contact Fernco, Inc., Customer Service Department, 810 653-9626. Purchaser is responsible for any shipping charges.

If state law preserves implied warranties of merchantability and fitness for a particular purpose, such warranties are limited to one-year from the date of the original purchase and as otherwise set forth above. Some states do not allow limitations on how long an implied warranty lasts, or the exclusion of incidental or consequential damages, so such limitation(s) or exclusion(s) may not apply to you. This written warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

ISO 9001

